

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

DEC 21 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Rules Governing 800 MHz Specialized Mobile Radio Service Systems to Permit Licensing of Wide-Area Block Authorizations

RM-8117

To: The Commission

**COMMENTS
OF
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

David E. Weisman, Esquire
Alan S. Tilles, Esquire
Terry J. Romine, Esquire

Its Attorneys

Meyer, Fallor, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(202) 362-1100

Date: December 21, 1992

No. of Copies rec'd
List A B C D E

TABLE OF CONTENTS

SUMMARY	i
I. BACKGROUND	1
II. COMMENTS	5
A. Preliminary Statement	5
B. Definition of Market by Use of MSA/RSA Designation	7
C. Urban v. Rural	9
D. Number of Channels Assigned to a Block Licensee ...	10
E. Urban Block Licenses	11
F. Co-channel Protection	12
G. Construction Requirements	13
H. Summary	13
III. CONCLUSION	16

EXECUTIVE SUMMARY

NABER favors the concept of block authorizations to foster the development of wide-area, technically-advanced, spectrum-efficient SMR networks. NABER has suggested a method by which these block authorizations may be created to provide an incentive for the construction of these systems in the rural areas in its Comments to the Fleet Call Innovator Block Petition. Further, NABER has endorsed a number of proposals to amend the Commission's rules to provide eligibility for SMR applicants to expeditiously obtain a wide-area authorization, to provide eligibility for an extended implementation period in association with a proposed wide-area SMR network, and to provide adequate interference protection to co-channel licensees in association with the construction and operation of wide-area SMR networks. NABER believes that these modifications to the Commission's rules would be beneficial to both the SMR operators who wish to compete with current and emerging wireless technology radio operators and the SMR operators who wish to provide traditional SMR dispatch services.

In this proceeding, AMTA's Petition for Rule Making advocates another method by which licensing of these wide-area SMR systems may be facilitated by the Commission. While NABER supports block allocations in the 800 MHz SMR band and the concept of wide-area authorizations for SMR systems as well as the need for the Commission to re-examine a number of its rules to meet the current and future needs of the SMR industry, NABER is concerned that AMTA's proposal may not adequately provide sufficient safeguards

to the SMR licensees that wish to remain independent and continue to provide the traditional SMR dispatch services. NABER urges the Commission to balance the needs of these competing interests and not give a greater preference to the persons seeking to consolidate SMR stations merely to facilitate the licensing of wide-area SMR networks. Further, although NABER supports the intent of AMTA's proposal as one of a number of vehicles for change to the SMR rules, the "Blueprint" itself does not address certain specific areas and concerns which need to be considered and resolved in the event a Notice of Proposed Rule Making is adopted by the Commission.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
DEC 21 1992
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Rules Governing)	
800 MHz Specialized Mobile Radio)	RM-8117
Service Systems to Permit)	
Licensing of Wide-Area Block)	
Authorizations)	

To: The Commission

COMMENTS
OF
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. § 1.401, hereby respectfully submits its Comments in response to the Petition for Rule Making filed by the American Mobile Telecommunications Association, Inc. ("AMTA") in the above-captioned proceeding.¹

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of manufacturers, vendors and service providers as well as large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses. NABER has five membership sections representing Users, Private Carrier Paging licensees, Radio Dealers, Technicians and Specialized Mobile Radio ("SMR") operators. NABER comprises over

¹Report No. 1918, released November 20, 1992.

6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

For the past 19 years, NABER has been the recognized frequency coordinator in the 450-470 MHz and 470-512 MHz bands for the Business Radio Service. NABER is also the Commission's recognized frequency coordinator for the 800 MHz and 900 MHz Business Pools, 800 MHz "old" conventional channels for Business eligibles and conventional SMR Systems, and for the 929 MHz paging frequencies. In its Report and Order in PR Docket No. 83-737, the Commission designated NABER as the frequency coordinator for all Business Radio Service frequencies below 450 MHz and, in a joint effort with the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), the Special Emergency Radio Service frequencies.

In this proceeding, AMTA proposes amendments to the Commission's rules to encourage and promote the development of technically-advanced, spectrum-efficient SMR systems with the ability to provide roaming capabilities and "satisfy the growing public demand for more ubiquitous personal communications capability."² AMTA asks the Commission to consider modification to its rules to permit market consolidation of SMR channels to create technically-advanced, wide-area systems. AMTA is concerned that without elimination of certain of the current SMR regulations, SMR licensees will be unable to remain competitive with the

² Petition at 1.

emerging wireless services, such as the proposed Personal Communications Service.³

AMTA contends that the Commissions rules impede rather than foster those licensees or operators that wish to establish wide-area, technically-advanced SMR networks. AMTA points to the numerous requests for rule waivers currently pending before the Commission seeking relief from the existing rules to enable existing SMR operators to re-configure constructed analog SMR stations into a digital SMR network system. AMTA acknowledges that not all SMR licensees seek or need this relief, and that the Commission should not mandate the conversion of independent, analog systems into network systems.

To facilitate the licensing of these wide-area systems, AMTA proposes that the Commission issues "block licenses" to existing SMR operators in urban areas⁴ and, in rural areas,⁵ allow an existing licensee(s) to consolidate and obtain a block license or grant one or two block authorizations to new applicants. AMTA proposes that the Commission, for the urban areas, open a thirty (30) day filing window in which applications from existing licensee(s) seeking to consolidate SMR stations within a particular

³ See Notice of Proposed Rule Making and Tentative Decision (FCC 92-337), PR Docket 90-314, 57 FR 40630 (September 4, 1992).

⁴ These areas are defined as markets that have fewer than 42 unassigned SMR frequencies. AMTA proposes to define a market as a Metropolitan Statistical Area ("MSA")/Rural Statistical Area ("RSA"). See 47 C.F.R. § 22.903.

⁵ AMTA defines as market with more than 42 unassigned SMR 800 MHz frequencies.

market would be accepted. Applicants would be limited to either an existing licensee or a group of existing licensees with constructed stations within the urban area on the date in which the filing window was opened. The proposed system must be wide-area and propose to implement a technically-advanced system providing at least twice the channel capacity of state-of-the-art analog equipment.

In the urban areas, the application with the greatest number of discrete frequencies would be ranked first and the other applications would be ranked in descending order by number of discrete frequencies sought. Block authority for frequencies previously "block assigned" to applicants with higher ranking would be deleted from the subsequent authorizations. Authorization of a block license would permit the licensee to re-use the frequencies within the specific MSA/RSA with notification to, but not approval of, the Commission. Co-channel licensees authorized the frequencies would retain their primary status at the sites at which the frequencies are authorized, but the frequencies may not be re-used by such licensee. In the urban markets, licensees receiving block authorizations would be required to construct at least 20% of their authorized channels using advanced technologies covering 75% of either the population or the land area of the market within five years.

In the rural areas, an existing licensee(s) would have the same option to consolidate stations as an existing licensee(s) in the urban areas. However, AMTA also proposes the Commission create

at least one, but no more than two, block authorizations of 42-800 MHz SMR frequencies to be assigned in each defined market. AMTA recommends the licenses be issued by a lottery process. Persons authorized these block licenses would be able to re-use the frequencies throughout the market. To discourage speculative filings, AMTA suggests the Commission impose a filing fee of \$200 per channel (or \$8,400) rather than the \$35 per transmitter site amount utilized in other application procedures. Further, AMTA would impose a construction requirement that at least 20% of the authorized frequencies (or 9 channels)⁶ be constructed with advanced technology equipment somewhere within the particular rural market within one year of grant. Failure to meet this construction criteria would result in automatic cancellation of the authorization. Additionally, any unconstructed channel(s) would be recovered at the five-year renewal date. Assignment or transferability would be prohibited until the licensee met the initial 20% construction requirement.

II. COMMENTS

A. Preliminary Statement

NABER, like AMTA, believes that the Commission must modify the rules that govern SMR operations to eliminate regulatory impediments that encumber a licensee from implementing the next generation of technically-advanced equipment. NABER encourages

⁶ Twenty percent (20%) of 42 channels is 8.4 channels. A frequency would either be constructed or not constructed, thus the .4 frequency has been rounded up in view of AMTA's position that these conditions are to discourage speculative filings.

the Commission to make a comprehensive review of Subpart S of Part 90 of the rules, and re-assess the applicability of these rules in light of the growth and maturation of the SMR industry. Rules that may have fostered competition in the 1970s and 1980s may now be stifling the growth of the SMR industry and may be contrary to the Commission's goal to encourage efficient use of the spectrum and maintain marketplace competition among the various radio services.

NABER supports the concept of the Commission developing and granting authorizations for a block of frequencies that can be re-used in an extended geographic area to implement the next generation of telecommunication options, including but not limited to spectrum-efficient, technically-advanced, wide-area SMR networks.⁷ The only means by which 800 MHz spectrum in urban areas can be converted to digital or any other highly efficient technology in a cost effective manner is to be able to offer wide-area service to customers. The implementation of digital systems in the urban area coupled with the expansion of such system over a wide area of coverage should encourage users to convert to the more efficient technology, starting a "snowball" effect of lower consumer costs as more equipment is brought to the marketplace.

⁷ See NABER's Comments submitted in response to the Fleet Call Petition for Rule Making, In the Matter of Policies and Rules for Licensing Fallow 800 MHz Specialized Mobile Radio Spectrum Through a Competitive Bidding Process, RM-7985, filed April 22, 1992 ("Fleet Call Innovator Block Petition"). See also NABER's Petition for Rule Making, In the Matter of Amendment of Section 90.631(g) and (h) of the Commission's Rules Concerning Wide-Area Specialized Mobile Radio and Business Radio Systems, RM-8029.

The Commission has seen that the inability of SMR Systems to offer wide-area service has severely hampered the implementation of new technology. Specifically, in the 900 MHz band, the issuance of licenses only within the Top 50 Designated Filing Areas ("DFAs") has prevented SMR operators from being able to offer wide-area service, resulting in slower than anticipated loading on 900 SMR Systems with 12.5 kHz bandwidth technology.⁸ The Commission should take steps to encourage the conversion of 800 MHz systems to more efficient technology in an expeditious manner. NABER, although supportive of the concept of AMTA's proposals, believes that the Commission should carefully weigh the benefits of AMTA's proposal to the SMR operators who have already initiated or wish to participate in consolidation of a market to develop a wide-area SMR network with the need to maintain options and opportunities for the small business entrepreneur.

B. Definition of Market by Use of MSA/RSA Designations

ATMA recommends that the Block Licenses (either by consolidation of current licensees or by creation of 42 frequency blocks) be issued in Commission-defined market areas. AMTA's proposal seems to change the manner in which current licensing of the proposed wide-area, digital SMR networks is sought. Currently, applicants who have sought or are seeking to develop wide-area digital SMR networks by reconfiguring existing analog stations have

⁸The Commission extended the loading deadline for 900 MHz SMR Systems in recognition of the importance of wide-area systems to the growth and loading of such systems. Report and Order, (FC 92-342), PR Docket 92-17, 57 FR 37730 (August 20, 1992).

been defining their market based on the service area of the analog stations. NABER believes, in the urban areas, AMTA's proposal may be broader than necessary to encourage and facilitate the establishment of these wide-area SMR networks.

NABER recognizes that the technically advanced SMR networks with a bevy of enhanced features may be able to effectively compete with the existing cellular licensees and proposed personal communications service licensees. There is therefore a natural tendency to propose to restructure the SMR rules similar to the rules by which these other licensees are or are proposed to be regulated. NABER, however, believes that the SMR industry would be better served to retain a more flexible regulatory structure in connection with service area than be constrained by arbitrary boundaries as imposed on the cellular licensees.

The recent experience of Commission-defined markets in the 900 MHz band SMR service may serve as an example of the impediment arbitrary boundaries may cause the development of a new service offering in the SMR industry. The Commission, specifically to facilitate licensing of the 900 MHz frequencies allotted to the SMR service, defined the market in which an applicant could apply to locate its SMR station.⁹ The DFA boundaries established were based on the top 50 MSAs (with some deviation to account for metropolitan areas that were less than 70 miles apart.) Many SMR operators

⁹ See Public Notice, Private Land Mobile Land Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands, 1 FCC Rcd 543 (1986).

found that these arbitrary boundaries constrained development of the 900 MHz SMR business.¹⁰

For these reasons, NABER asks the Commission to carefully consider the impact of selecting pre-defined market boundaries for licensing the wide-area SMR networks created in the urban areas from existing constructed analog stations. The establishment of strict market boundaries may cause an SMR operator who currently enjoys a service area that encompasses several MSAs/RSAs to be foreclosed from obtaining a block license permitting it to re-use its authorized frequencies throughout its current service area. NABER believes a better method is to allow the licensee seeking a block authorization in the urban areas to define its "market," similar to the current practice of defining a wide-area SMR system by identifying the "footprint" of the existing constructed analog SMR stations.

C. Urban vs. Rural

AMTA distinguishes between Urban Areas and the Rural Areas based on the availability of unassigned 800 MHz SMR frequencies in the markets defined by MSAs/RSAs. As discussed above, NABER recommends that the Commission not set pre-defined markets to license Block Authorizations in the urban areas. However, NABER

¹⁰ See Order (DA 89-342), In the Matter of Application to Modify License WNIX 518 and Request for Waiver by Environmental Exploration Corp., adopted March 23, 1989 (Chief, Land Mobile and Microwave Division); Order (DA 89-343), In the Matter of Application to Modify License WNKM 964 and Request for Waiver by Sharon Mutter, adopted March 23, 1989 (Chief, Land Mobile and Microwave Division); see also Report and Order, PR Docket 92-17, supra fn. 8.

agrees that a distinction between urban and rural is necessary to determine whether a newly-created block authorization may be required to stimulate development of a wide-area, technically-advanced SMR network in the area. NABER suggests the Commission maintain its definition of urban and rural currently found in Subpart S of Part 90 of its rules, but increase the area encompassed within the urban areas by increasing the radius from the geographic center of the urban area or wait list area.

D. Number Of Channels Assigned To A Block Licensee

In rural areas where existing licensees are not interested in converting to wide-area digital systems, NABER believes that the Commission should facilitate the construction of digital SMR networks.¹¹ As NABER stated in its Comments to the Fleet Call Innovator Block Petition, the number of channels assigned in a Block License must be sufficient to permit a frequency re-use pattern sufficient to cover the market and have enough capacity for reasonable market penetration. NABER agrees with AMTA that at least one Block License of 42 channels should be considered for authorization in a rural area. Further, NABER agrees that sufficient spectrum must remain available to other users.¹²

¹¹ See NABER's Comments to the Fleet Call Innovator Block Petition. NABER proposed that the Commission create Innovator Block authorizations in the rural areas licensing General Category channels rather than 800 MHz SMR frequencies. This proposal would provide incentive for wide-area, digital SMR systems while allowing for existing 800 MHz SMR licensees to expand the capacity of their system or permit new stations to be licensed in these areas.

¹² See Petition at p. 8.

E. Urban Block Licenses

NABER agrees that the proposal propounded by AMTA to create Block Licenses in the urban, wait-listed areas may further encourage the consolidation of SMR systems into a wide-area SMR network. The Commission, however, should ensure that it implements sufficient mechanisms to maintain an adequate level of competition in a market and not eliminate the business opportunities of SMR operators who wish to continue with the traditional dispatch SMR services. NABER is concerned that the proposal may be more beneficial to the SMR operators who have initiated the first phase of consolidation in the major metropolitan areas, and may mandate consolidation by the smaller SMR operators contrary to AMTA's intent. Also, the proposal may discriminate against SMR operators who have initiated frequency re-use in their service areas in an effort to implement spectrum-efficient, wide-area systems under the existing SMR rules rather than by acquiring additional discrete frequencies.

NABER supports the Commission's initiation of revisions to the rules governing SMR systems that would implement a regulatory structure that facilitates the authorization, construction and operation of wide-area SMR networks.¹³ AMTA's proposal is appealing in that the processing of applications for these wide-area systems would be simply a mechanical, mathematical procedure unlike the

¹³ The Commission, in addition to AMTA's Petition, has several other Petitions for Rule Making (AMTA's Petition at p. 2) that together with AMTA's proposal may be used by the Commission to initiate a rule making proposing to significantly restructure the rules governing SMR systems.

current process which may require several months of review. However, the Commission must carefully balance its preference for this result with the imposition of business plan that a licensee may not otherwise have contemplated or definitely does not want.

F. Co-channel Protection

The grant of the Block License, under AMTA's proposal, would allow the licensee to re-use the authorized frequencies anywhere within the defined market with only notification to the Commission of the location, rather than pre-approval of the site location as now required. AMTA proposes that the Block Licensee continue to provide adequate interference protection to existing co-channel licensees. Envisioning only a cellular-like system, NABER agrees this type of licensing structure is the most desirous to a Block Licensee.

NABER questions, however, how the Commission can enforce this protection, or how the co-channel licensee will know to object to the construction of a station that does not provide the required protection, under a notification procedure. NABER suggests that an additional requirement be imposed on the Block Licensee to give notice to the co-channel licensee, should a proposed station be less than 70 miles from the co-channel licensee. The Block Licensee would be required to obtain evidence of the co-channel licensee's concurrence of the construction of the station, and forward the evidence of concurrence with the notification document to the Commission.

Should the co-channel licensee not concur with the construction of the proposed station, the Block Licensee would be required to seek prior Commission approval by filing an FCC Form 574 application for the proposed station. NABER believes that this process would balance the Block Licensees need to dynamically restructure its system based on the network traffic and the existing co-channel licensee's entitlement to continued interference protection.

G. Construction Requirements

NABER agrees that wide-area digital SMR networks generally cannot be constructed in the required one-year period under the rules.¹⁴ Recently, NABER submitted to the Commission detailed comments on the conditions that should be placed on an applicant seeking more than one year to construct a wide-area, technically advanced SMR network.¹⁵ NABER believes that the framework enunciated in these comments should be incorporated into the Commission's proposal to modify the construction rules in connection with these wide-area systems.

H. Summary

The Commission's rules that govern SMR system's licensing, construction, and operations are outdated, and need to be revised

¹⁴ See 47 C.F.R. § 90.631(e) and (f).

¹⁵ See NABER's Reply Comments filed December 15, 1992, Notice of Propose Rule Making (FCC 92-429), Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods, PR Docket 92-210, 57 FR 49058 (October 29, 1992); NABER's Reply Comments filed December 9, 1992, In the Matter of Dial Page, Inc. Amendment to Pending Applications to Request Waiver of the Commission's Rules for 800 MHz Specialized Mobile Radio Service.

to facilitate the implementation of the emerging technologies in the SMR spectrum. The underlying purpose for creation and operation of SMR and non-SMR systems are different, but the rules do not currently reflect these distinctions. The Commission has attempted to regulate both SMR and non-SMR 800/900 MHz private land mobile radio services employing the same general rules, which has resulted in confusion by both SMR and non-SMR licensees alike as to the applicability of the rules to their systems. NABER believes that the Commission should recognize the different uses and purposes of these systems by establishing regulations that specifically address the private carrier needs and separately regulate systems operated by a licensee for internal business needs.

NABER considers modification of three rules, along with creation of Block Licenses in the rural areas,¹⁶ critical to the conversion of existing analog SMR systems to wide-area, technically advanced SMR networks. These modifications are: (1) the establishment of adequate protection for co-channel licensees,¹⁷ (2) the ability of SMR operators to license wide-area systems under Section 90.631(g) and (h) of the Commission's rules,¹⁸ and (3) the

¹⁶ See fn. 11.

¹⁷ See Petition for Partial Further Reconsideration of the Report and Order (FCC 91-229), PR Docket 90-34, 6 FCC Rcd 4929 (1991), as aff'd in Memorandum Opinion and Order (FCC 92-363), PR Docket 90-34, 57 FR 43408 (September 21, 1992), as corrected 57 FR 47703 (October 20, 1992) filed by Motorola, Inc. on October 21, 1992.

¹⁸ See Petition for Rule Making, RM-8029, filed by NABER on March 13, 1992, and placed on Public Notice on July 13, 1992.

ability of SMR applicants to obtain an extended implementation period under Section 90.629.¹⁹ All three matters are currently pending before the Commission for its consideration and action.

NABER believes that the Commission is well-positioned to fashion more detailed rules for the regulation of SMR operations that combine the various proposals pending before the Commission, including AMTA's general blueprint for licensing wide-area SMR systems. NABER encourages the Commission to implement a licensing scheme that will permit the expeditious authorization of wide-area, technically advanced SMR networks pursuant to the rules, without need for a waiver request. However, NABER urges the Commission also to maintain the status quo of the small business entrepreneurs who wish to remain independent, and permit such licensees the continued ability to expand their operations. NABER is confident that the Commission can meet the challenge of achieving a balance between the needs of these two competing interests without eliminating viable business opportunities of either the consolidator or the small, independent businessman.

¹⁹ See Notice of Proposed Rule Making, PR Docket 92-210, supra fn. 15.

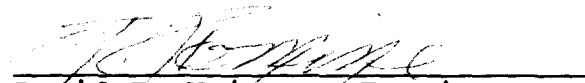
III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION FOR BUSINESS
AND EDUCATIONAL RADIO, INC.**

By:


David E. Weisman, Esquire
Alan S. Tilles, Esquire
Terry J. Romine, Esquire

Its Attorneys

Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(202) 362-1100

Date: December 21, 1992

CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law offices of Meyer, Faller, Weisman & Rosenberg, P.C. hereby certify that I have on this 21st day of December, 1992 sent via first class mail, postage prepaid, a copy of the foregoing "Comments" to the following:

Alan R. Shark, President
American Mobile Telecommunications
Association, Inc.
1835 K Street, N.W., Suite 203
Washington, D.C. 20006

Elizabeth R. Sachs, Esquire
Lukas, McGowan, Nace & Gutierrez
1891 H Street, N.W., Suite 700
Washington, D.C. 20006


Ruth A. Buchanan